

UNITED STATE BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI

IN RE:

MICHAEL R. SMITH, SR.,
DEBTOR

CASE NO. 08-10080-DWH

CHAPTER 11

COMPLAINT

COMES NOW the Conservatorship of Maggie Mae Smith, creditor in the above styled and numbered cause, and files this adversary proceeding to determine the dischargeability of certain debts that are claimed to be due and owing from Michael R. Smith, Sr., to the Conservatorship of Maggie Mae Smith, pursuant to §523 (a) (2), §523 (a) (4); and §523 (a)(6), and in support thereof would show the following:

1. The Conservatorship of Maggie Mae Smith filed a Petition to Remove Michael R. Smith as Trustee of the Maggie Legett Smith Irrevocable Trust on or about August 9, 2002.
2. This Petition requested among other things that the Court enter an Order requiring Michael R. Smith to render a full and complete accounting of all of trust activity, including an accounting as to all moneys and properties received and disbursed, all investments made, all income collected in the administration of the Trust, and all charges for compensation made by Michael R. Smith against the Trust property.
3. Michael R. Smith is the Trustee of both the Maggie Legett Smith Irrevocable Trust, as well as the Miss Eva Elise Legett Revocable Trust.
4. Maggie Mae Smith is a beneficiary of those trusts.
5. Michael R. Smith has failed to provide the beneficiary, or her Conservator, a proper accounting regarding those trusts, and further, engaged in self-dealing, whereby he obtained real property from the Miss Eva Elise Legett Revocable Trust, sold same, and failed to account for

the proceeds from the sale of said real property.

6. In addition to the real property referenced in paragraph 5., Michael R. Smith, as trustee of the Miss Eva Elise Legett Revocable Trust, withdrew money from that Trust, for his personal benefit, more particularly, to wit:

- a. \$11,900.00 paid to Global Aircraft; a company of which Mike Smith is President;
- b. \$1,781.47 paid to Daniel Coker Horton & Bell, for which no itemization has been provided regarding the legal services rendered, and/or whether same had any connection with the Miss Eva Elise Legett Revocable Trust;
- c. Approximately \$8,739.46 paid to Stubblefield, et al., for which no itemization has been provided regarding the legal services rendered, and/or whether same had any connection with the Miss Eva Elise Legett Revocable Trust;
- d. Funds paid from the Trust to Michael Smith personally, in the amount of \$2,800.00. In addition there were other cash withdrawals for which no indication is made that it was for the benefit of the Trust, and an accounting is needed to determine whether cash withdrawals in the amount of \$6,965.00, were for the benefit of the Trust. In addition, \$10,000.00 was previously provided to Michael Smith, as Trustee, to run the Trust, for which the Michael Smith has not provided any accounting, for a total amount of cash expended in the amount of \$19,765.00;
- e. Amounts paid to Paul Hastings of approximately \$7,004.00, for which no accounting has been provided to reflect that the Trust derived any benefit from said services;
- f. One mower, purchased by the Trust for \$1,573.43, was removed from the premises occupied by the beneficiary of the Trust, and the whereabouts of said

mower is not known;

- g. Amounts paid to Service Merchandise, in the amount of \$583.00, for which no accounting has been made, and therefore, there is no indication that the Trust or its beneficiary received any benefit; and
- h. Any interest that may be due and owing at the legal rate of 8 percent, from the dates any or all of the above amounts were due, owing and payable to the Trust.

7. The aforesaid Petition was pending in the Chancery Court of Rankin County, Mississippi, at the time that the bankruptcy petition of Michael R. Smith was filed, and was scheduled for trial on March 4, 2008. The trial on the Petition was stayed, due to the filing of the bankruptcy petition by Michael R. Smith.

8. Michael R. Smith provided a memo to Maggie Smith and David Smith on or about June 30, 1999, in which it was indicated that the land, referenced in paragraph 5. above, was sold and that some of the money from the proceeds of the sale was deposited into a Trust account that existed with Merrill-Lynch. Michael R. Smith has not voluntarily provided any further statements to the Conservator, David Smith, regarding the proceeds of the sale, and the only additional documentation regarding the sale of that property has been acquired through litigation, and is attached hereto. Michael R. Smith has failed to account for the balance and interest he received from the proceeds of the sale, that should have enured to the benefit of the trust, and more particularly, to the benefit of the trust beneficiary, Maggie Mae Smith.

9. Michael R. Smith has an ongoing fiduciary duty as the trustee of the Maggie Legett Smith Irrevocable Trust and as the trustee of the Miss Eva Elise Legett Revocable Trust, and should be held accountable for any assets, funds, or waste that has occurred as a result of his

actions as trustee.

10. The amount owed to the aforesaid trusts is believed to be in excess of \$1,000,000.00. However, an exact amount cannot be determined in the absence of an accounting by Michael R. Smith of the trust funds, and his actions as a trustee.

11. The Maggie Mae Smith Conservatorship respectfully submits that Michael R. Smith, debtor, has engaged in fraudulent activities that have resulted in the above amounts being owed to the Conservatorship, and as such same should not be dischargeable.

WHEREFORE, PREMISES CONSIDERED, the Maggie Mae Smith Conservatorship respectfully requests any relief to which it may be entitled under §523 (a) (2),(4), and (6).

Respectfully submitted this the 9th day of September, 2008.

MAGGIE MAE SMITH CONSERVATORSHIP

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